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29 September 1954

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: Discussion with Mr. Lyle Fisher, General Counsel, GAO,
Regarding Applicability of General Statutes to Proprietary Organizations of CIA

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REFERENCE: Memorandum of [] to Mr. Houston dated 6 January 1953, subject "Applicability of Public Law 53 to Retired Military Officers on Covert Projects."

1. Although this general matter had been discussed with Mr. Fisher in 1952 (see Item from the Daily Log - 19 November 1952), it is believed desirable to look further into the matter since we were confronted with the specific request from the individual whether or not he should sign a certificate that he was not occupying an office. The particular Project is []. It was Mr. Fisher's belief that all of the facts and circumstances surrounding the case must be considered in arriving at a determination, and he agreed with us that even then our determination would not in the final analysis convey any guarantee to the individual. He pointed out his position on the Dollar Line case where GAO was temporarily holding all of the stock. In that case, it was his belief that the Dual Compensation statutes are not applicable since the company itself was not truly, in the sense contemplated by the Congress, owned and controlled by the government. Therefore, in the specific case at hand, it would be important to know what arrangements were made in the initiation of the individual's employment by the Foundation and whether there is any contractual relationship between the Agency and the individual. The nature of that contractual relationship would also be important, i.e., does it run to security control or administrative control, or both.

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2. The discussion was then expanded to cover other types of laws which are by their terms applicable to wholly-owned or controlled corporations of the government and instrumentalities of the government. Those laws include Federal Employees Compensation Act, Annual and Sick Leave Act, Income Tax, Missing Persons Act, etc. It was agreed that as a pure legal technical matter in many cases these laws clearly applied, but that the fundamental basis for denial of the application of the laws was security. It was Mr. Fisher's general belief that where security does prohibit application of certain of the laws which would otherwise apply to an employee of the government instrumentality that the position maintained should be consistent and that none of the laws should be applied. This would form some basis for justification

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of the action taken and does not run to whether or not the laws themselves are applicable.

3. However, the entire matter becomes more difficult when you realize that the individuals themselves may seek benefits under some of the laws at a later date or in the alternative, other government agencies may seek certain redress from such employees. Therefore, no determination by this Agency would be final and conclusive. It is, therefore, incumbent upon the Agency to consider all of these matters and the risks involved and arrive at a basic policy and establish necessary procedures to insure adherence to such a policy. This office will initiate such action.

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Acting General Counsel

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